

AMENDED IN SENATE MAY 5, 2010

AMENDED IN SENATE MARCH 25, 2010

SENATE BILL

No. 988

Introduced by Senator Huff

(Principal coauthor: Assembly Member Logue)

**(Coauthors: Senators Aanestad, Cogdill, Cox, Dutton,
Hollingsworth, and Runner)**

February 8, 2010

An act to add Section 11349.95 to the Government Code, relating to regulations, and declaring the urgency thereof, to take effect immediately.

LEGISLATIVE COUNSEL'S DIGEST

SB 988, as amended, Huff. Regulations: 5-year review and report.

The Administrative Procedure Act generally sets forth the requirements for the adoption, publication, review, and implementation of regulations by state agencies.

Existing law establishes the Bureau of State Audits, which is headed by the State Auditor and has specified statutory duties, including the performance of statutorily mandated audits.

This bill would require the ~~Office of Administrative Law~~ *Bureau of State Audits* to review ~~and report, report, and make recommendations~~ on each regulation, before May 1 of the 5th year after the regulation was amended or adopted, that the State Energy Resources and Development Commission, the Public Utilities Commission, the California Consumer Power and Conservation Financing Authority, or any other state agency that has duties relating to state energy regulations or the implementation of those regulations adopts or amends on or after January 1, 2011. The bill would require the review ~~and report, report,~~

and recommendations to include specified factors, including a summary of the written criticisms received by the agency that adopted or amended the regulation within the preceding 5 years and the estimated economic, small business, and consumer impact of the regulation, as specified. The bill would require the ~~office~~ *bureau* to make the report available on its Internet Web site. *The bill would authorize the adopting agency to take specified actions in response to the bureau's report, and would provide that a regulation ceases to be operative, as specified, if the agency takes no action.*

This bill would declare that it is to take effect immediately as an urgency statute.

Vote: $\frac{2}{3}$. Appropriation: no. Fiscal committee: yes.

State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 11349.95 is added to the Government
2 Code, to read:

3 11349.95. (a) The applicability of this section is limited to the
4 State Energy Resources Conservation and Development
5 Commission, the Public Utilities Commission, the California
6 Consumer Power and Conservation Financing Authority, and any
7 other state agency that has duties relating to state energy regulations
8 or the implementation of those regulations.

9 (b) (1) ~~The Office of Administrative Law~~ *Notwithstanding*
10 *Section 8544.5, and upon an appropriation by the Legislature for*
11 *the purposes of this section, the Bureau of State Audits* on behalf
12 of a state agency included in subdivision (a), shall review ~~and~~
13 ~~report, report, and make recommendations~~ on any regulation that
14 an agency included in subdivision (a) adopts or amends on and
15 after January 1, 2011, as required by this section. The review ~~and~~
16 ~~report, report, and recommendations~~ shall be completed by the
17 ~~office bureau~~ on or before May 1 immediately following five years
18 after the date the regulation was adopted or amended.

19 (2) ~~The office bureau~~ shall make a report required by paragraph
20 (1) available on its Internet Web site.

21 (c) The review ~~and report, report, and recommendations~~ required
22 by this section shall include all of the following factors:

23 (1) The general and specific statutes authorizing the regulation.

24 (2) ~~The objective purpose~~ *purpose* of the regulation.

1 (3) The effectiveness of the regulation in achieving the objective
2 *purpose*.

3 (4) The consistency of the regulation with state and federal
4 statutes and regulations and a listing of the statutes or regulations
5 used in determining the consistency.

6 (5) The enforcement policy of the agency that adopted or
7 amended the regulation, including whether the regulation is
8 currently being enforced and, if so, whether there are any problems
9 with enforcement.

10 (6) The view of the agency that adopted or amended the
11 regulation regarding the current wisdom of the regulation.

12 (7) The clarity, conciseness, and understandability of the
13 regulation.

14 (8) A summary of the written criticisms of the regulation
15 received by the agency that adopted or amended the regulation
16 within the five years immediately preceding the ~~office's~~ *bureau's*
17 five-year review report, including letters, memoranda, reports, and
18 written allegations made in litigation or administrative proceedings
19 to which the agency was a party, any indication that the regulation
20 is discriminatory, unfair, unclear, inconsistent with statute, or
21 beyond the authority of the agency to enact, and the status or result
22 of the litigation or administrative proceedings.

23 (9) The estimated economic, small business, and consumer
24 impact of the regulation as compared to the economic, small
25 business, and consumer impact statement prepared on the last
26 making of the regulation, or, if no economic, small business, and
27 consumer impact statement was prepared on the last making of
28 the rule, an assessment of the actual economic, small business,
29 and consumer impact of the regulation.

30 (10) The course of action the agency that adopted or amended
31 the regulation proposes to take regarding the regulation, including
32 the month and year in which the agency anticipates submitting the
33 rules to the ~~office~~ *bureau* if the agency determines it is necessary
34 to amend or repeal an existing rule, or to make a new rule.

35 (d) In response to the ~~office's~~ *bureau's* review ~~and report~~, *report*,
36 *and recommendations* required pursuant to paragraph (1) of
37 subdivision (b), the agency that adopted or amended the regulation
38 may do any of the following:

1 (1) Do nothing, in which case the regulation will cease to be
2 operative as of 2 years after the date the ~~office~~ *bureau* issued the
3 report.

4 (2) Implement the recommendations of the ~~office~~ *bureau*.

5 (3) Develop its own plan to ~~redress the concerns~~ *address the*
6 *recommendations* noted by the ~~office~~ *bureau* in the report.

7 SEC. 2. This act is an urgency statute necessary for the
8 immediate preservation of the public peace, health, or safety within
9 the meaning of Article IV of the Constitution and shall go into
10 immediate effect. The facts constituting the necessity are:

11 In order to accelerate the creation of jobs in this state so that the
12 ongoing economic crisis may be immediately addressed, it is
13 necessary that this act take effect immediately.